

**PENNSYLVANIA
STATE PROGRAMMATIC GENERAL PERMIT -1
(PASPGP-1) MONITORING REPORT**

**EXECUTIVE SUMMARY
MARCH 2000**

Summary and Background of the PASPGP

The U.S. Army Corps of Engineers (Corps) issued The Pennsylvania State Programmatic General Permit (PASPGP) on March 1, 1995 for a five-year period. The goal of the PASPGP was to streamline the permitting process by eliminating duplicative Federal and State review for many permit applications, while meeting the Federal Section 404 and State Chapter 105 program requirements and maintaining the environmental standards of both programs. Under the existing PASPGP, the Pennsylvania Department of Environmental Protection (PADEP) or PADEP's delegated County Conservation Districts (CCDs), typically issue Federal authorizations for projects impacting less than one acre of wetlands or less than 250 linear feet of stream channel. Projects impacting one to five acres of wetlands, and projects impacting greater than 250 linear feet of stream channel, are forwarded to the Corps as "Reporting". Projects with over 5 acres of wetland impacts are ineligible for the PASPGP and are reviewed by the Corps for Federal Authorization.

Report Mandate and Design

The PASPGP requires that the Baltimore District Engineer, in consultation with Philadelphia and Pittsburgh Districts and Division Engineers, "monitor and reevaluate the PASPGP in order to determine whether to: modify, reissue or revoke the permit". The purpose of this requirement is to insure that the PASPGP process provides adequate review of permit actions, appropriate public input and maximum resource protection consistent with the requirements of the Federal Section 404 Permit Program. The Federal Section 404 Program provides for Individual Permit (IP) review on a case-by-case basis and a Nationwide Permit Program (NWP) which authorizes categories of actions with minimal impacts nationwide. The PASPGP accompanying document, The Standard Operating Procedures (SOP), mandated the formation of an interagency PASPGP Monitoring Committee (Committee) to assist with this goal, and to assist the Corps in the

preparation of periodic monitoring reports. The Committee consists of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Pennsylvania Department of Environmental Protection, Pennsylvania Fish and Boat Commission (PFBC), Pennsylvania Game Commission (PGC), Pennsylvania Historic and Museum Commission (PHMC), and CCDs.

The Corps, in consultation with the Committee, determined that in order to accomplish the required analysis, a comprehensive review of the PASPGP would be required and the following questions would need to be addressed:

1. Were PASPGP permits processed in a timely manner?
2. Does the PASPGP as implemented, comply with the 404(b)(1) guidelines?
3. Was there adequate and successful mitigation?
4. Are all applicable Section 404 permit guidelines being reasonably followed?
5. Are there additional ways to streamline the permit process?

In addition, the Corps also recommended consideration of the following:

1. Were PADEP General Permits (GPs) generally issued in an appropriate manner?
2. Was there consistency in approach among PADEP Regions?
3. Was there general compliance with the terms and conditions of permits; and if not,
4. Was non-compliance a result of PASPGP limitations?
5. Did the PASPGP save permit evaluator time?
6. Is the PASPGP an improvement for the regulated public?
7. Was there improved protection to aquatic resources?
8. Is the State Chapter 105 Program consistent with the Federal Section 404 program?

In addressing the above questions, this report provides the first comprehensive analysis of the PASPGP in meeting the environmental and administrative requirements of the Federal Section 404 permit program. Data reviewed covers the first 18 months of implementation of the PASPGP and was collected from all PADEP Regional Offices and delegated County Conservation Districts (CCDs). Additional information, including case

studies, covers a time period of approximately 3 years. PADEP Individual Permits (IPs), Small Project Permits, General Permits and Emergency Permits (EPs) were reviewed. Office and field reviews of issued permits were conducted. Evaluators, technical support agencies, and consultants were also polled. This report was prepared jointly by the Baltimore, Philadelphia, and Pittsburgh Corps of Engineers Districts with assistance from the Committee, an interagency advisory panel which assisted in the development of testing protocols, data collection and draft document review.

The objective of this report was to ensure consistency between the Federal and State Regulatory Programs as implemented through the PASPGP, and to provide constructive recommendations to address any differences so that the PASPGP partnership can be improved and maintained through reauthorization of the permit.

Report Findings

The PADEP Chapter 105 Waterways and Wetlands Protection Program provides a comprehensive approach to waterways and wetlands management. The PADEP Chapter 105 program, in conjunction with the Federal program, including the PASPGP, provides a greater level of protection for aquatic resources and better customer service than would the Federal program alone with the Individual and the Nationwide Permit Program.

Many positive aspects of the PADEP's program include:

1. The Corps, under Section 404, regulates the discharge of dredged and fill material in Waters of the U.S., including jurisdictional wetlands. PADEP's program covers not only the discharge of dredge or fill material but also excavation activities, and virtually all structures, and encroachments in wetlands, streams, and other bodies of water with few exceptions.
2. PADEP regulations require wetland replacement for all impacts either through the permit conditions or the Pennsylvania Wetland Replacement Project (FUND) regardless of the size of the wetland or impacts to wetlands.
3. The creation of the Fund has been a significant improvement to the PADEP program. Successful mitigation through the Fund can help to ensure no net loss of wetlands. PADEP and the Corps are working

together to ensure no net loss of wetlands.

4. The PADEP Chapter 105 regulations provide the same requirements for alternative analysis, avoidance, minimization, and consideration of secondary impacts as the Federal Section 404 regulations.
5. The Department's six regional offices and 41 County Conservation Districts provide a substantial field presence and assistance to citizens, (far beyond that which can be offered by the Corps).
6. The PADEP program provides coordination of erosion and sediment control plans and 401 Water Quality Certification on all permitted projects.
7. The PADEP implements a "Money Back Guarantee Program" to ensure customer service and timely permit decision without compromising environmental protection.
8. PADEP tracks all wetland activities including permitting, mitigation, and restoration and reports annually to the public.

In addition, specific positive aspects of the PASPGP include:

1. PADEP is conducting field inspections on most IP projects.
2. The majority of agency comments were addressed for IP projects.
3. PADEP Regions are doing an effective job of conducting a Pennsylvania Natural Diversity Index (PNDI) search for IP projects.
4. PADEP, in conjunction with the PA Department of Conservation and Natural Resources, has initiated an updated computerized data base process to help ensure Endangered Species Act compliance.
5. Generally, written findings regarding the analysis of functions and values of areas to be impacted were provided for IP projects.
6. Wetland mitigation was required for IP projects.
7. Most IP projects field reviewed were found to be in compliance with the permit plans, which reflects well on the PADEP program, in terms of public awareness and clarity of the permit process for applicants.
8. Most consultants polled find the PASPGP to be more timely, better understood and more streamlined as compared to the separate Corps and PADEP processes.

Through the Corps and the PADEP partnership, with similar resource protection goals, less than 100 acres of wetland impacts per year have been authorized through the PADEP Individual Permit process. The Corps and PADEP are also continuing to work closely together to refine mitigation strategies so that all unavoidable impacts are addressed.

In addition, the data and findings of the monitoring report have documented that the existing PASPGP process is generally consistent with the Federal Section 404 standards. However, because some Section 404 and Chapter 105 process differences have been identified, this report highlights areas where the PASPGP process can be improved to provide clarity and more consistent processing for the Corps, PADEP, County Conservation Districts, and the review agencies (EPA, USFWS, NMFS, PFBC, PGC, PHMC). There are specific recommendations for improvements in single and complete project screenings, PASPGP approvals, documentation of findings and registration processes. There were a few instances identified in the Monitoring Report where more than minimal impact projects were authorized under the PASPGP and, as a result of process differences, should have required a Corps Individual Permit review. The recommendations address process differences to preclude the potential for more than minimal impacts to be authorized under the PASPGP.

Recommendations for improving the implementation of the PASPGP are provided in the report, many of which are already underway. Joint interagency training on improved permit coordination procedures will be provided. In addition, amended general permit registration forms, and records of decisions as well as a screening process for single and complete project reviews will be implemented. The Corps and PADEP are working in concert with the Federal and State resource agencies to make improvements to the PASPGP through amendment and refinement of the PASPGP and the SOP documents. Both the Corps and PADEP expect that the implementation of the amendments and refinements will result in an improved process that benefits both the resource and the regulated public. It is expected that with continued progress, the Corps may recommend reissuance of the PASPGP for a five-year period. These improvements will facilitate better coordination between the respective agencies and the implementation of the State and Federal regulatory requirements.

In addition, the PADEP regulations are currently being revised with input from Federal and State resource agencies, a variety of interest groups, and the public. One of the goals of this revision process is to provide consistency between the PADEP regulations and the Federal Section 404 regulations, and the Corps will be providing recommendations to PADEP for consideration during the rulemaking process.

Analyses Conducted

In order to accomplish the stated goals of this report, the following analyses were conducted. Details of each analysis along with findings, detailed discussion, and recommendations can be found in Chapters 3 -5

Office Review Analysis and Field Review Analysis (Chapter 3, Parts 1-2)

Two interagency work groups (teams) were convened, the Office Review Team (ORT) and the Field Review Team (FRT), consisting of volunteer members of the Committee or their designees. Each team was tasked with developing protocols for the collection of pertinent data from all six PADEP Regional Permitting Offices (PADEP Regional Offices). A total of 174 Individual Permits (IPs) and 278 General Permits (GPs) were office reviewed, statewide. A subset of all office reviewed projects were randomly chosen for field review analysis. A total of 185 sites were field reviewed. Of these, 86 were IP or Small Project permits and 99 were GP projects. Data forms were developed by the Committee for the collection of data for all ORT and FRT tasks, and are presented for each PADEP Region. The following areas were reviewed as part of the monitoring report effort and recommendations were provided, as appropriate:

Single and complete project reviews, field inspections for IP's, wetland boundary verifications, consideration of agency comments, Pennsylvania Natural Diversity Inventory (PNDI) searches, the Pennsylvania Historic and Museum Commission (PHMC) review and clearance process, coordination for project modifications, consideration and documentation of project alternatives, written (file) documentation concerning consideration of functions and values of aquatic resources, permit processing time, and management of the General Permit program.

County Conservation District (CCD) Analysis (Chapter 3, Part 3)

Under the Chapter 105 permit program, a substantial number (41) of CCDs have been delegated authority from the State to issue GPs, to conduct site inspections, and to perform limited enforcement functions. A majority of the GPs administered by the CCDs represent those permit activities processed by the Corps prior to the PASPGP, as reporting or non-reporting NWP or small Corps IPs depending upon the particular GP or category of activity and the particular project limits. A three-page questionnaire was

developed by the Committee, for the collection of permitting data from delegated CCDs. Many of the questions were taken directly from PADEP's own monitoring questionnaire, sent to CCDs in the past. Responses were received from 31 of 41 delegated CCDs. A total of 4,828 GPs were registered by these CCDs during the review period. A graphical presentation and data analysis is presented for all substantive data fields. The following is a summary of the responses received:

Delegated CCDs provide office review of applications for completeness and/or applicability. The level of review varies with the CCD.

1. Delegated CCDs are not required to provide pre- or post-construction inspections and verify permit application data in the field for GP projects.
2. Many delegated CCDs suggest that more information is needed to effectively review projects, such as sketches and photographs.
3. A few delegated CCDs indicated that they (and GP users, such as landowners and contractors) are unclear regarding the scope, limits and applicability of GP's. Education for CCD staff, landowners, contractors, developers, etc. was requested.
4. Delegated CCDs provide initial field response for reports of illegal water obstructions and stream or wetland encroachments. During the year 1996, approximately 833 of these investigations were performed by the surveyed CCD's. Many CCDs identified a need for additional training in identifying wetland sites.
5. Delegated CCDs resolved most Chapter 105 violations through voluntary restoration.
6. Most surveyed CCDs have indicated that more compliance support and rapid response by the Corps and PADEP is needed.
7. Most CCDs see their local role as extending well beyond their delegated duties, and believe additional funding is needed to implement a comprehensive program.
8. Delegated CCDs could be an effective partner in post-construction compliance inspections given their familiarity with the projects and localities.

The Corps supports CCD delegation. Their link to the community fulfills a role that has been demonstrated to be invaluable to the protection of aquatic resources and customer service. Recommendations are provided in this section to improve the PADEP GP process to enhance the Corps/PADEP/CCD partnership through the PASPGP.

Emergency Permit Analysis (Chapter 3, Part 4)

PADEP Emergency Permits (EPs) can be issued with the PASPGP attached. A questionnaire was developed to assess a sample of 110 EPs issued since inception of the PASPGP. There were a few instances identified in the monitoring report where more than minimal impacts were authorized under the PASPGP primarily due to a lack of adequate project plans and descriptions. To minimize the potential for more than minimal impacts to be authorized under the PASPGP, recommendations are provided to improve the EP process, include more detailed project descriptions and project limits.

GP-3 Analysis (Chapter 3, Part 5)

The Monitoring Report reviewed the GP3 (Bank Rehabilitation, Bank Protection, and Gravel Bar Removal) permit process. Specifically, only the Gravel Bar Removal projects are required to be reported to the Corps under the PASPGP for individual Corps review. The purpose of this Chapter was to determine if these projects should remain reporting to the Corps or be made non-reporting to the Corps. The review showed the permittees continue to not comply with the GP3 and PASPGP project specific conditions. Therefore, the recommendation is that the GP3 Gravel Bar Removal Projects remain reporting to the Corps and that PADEP and the Corps continue their field presence in the review of these projects as they are being constructed to improve compliance.

Case Studies and Associated Issues (Chapter 3, Part 6)

The case studies illustrate areas where more effective process and implementation of the PASPGP is necessary to minimize the potential of more than minimal impacts from occurring and ensure single and complete project reviews. Except for a few instances, the cases do not illustrate any environmental harm due to the implementation of PASPGP. Also, these case studies are not intended to suggest there are chronic problems or

patterns of misuse of the PASPGP process by Federal or State agencies, but rather the process inconsistencies.

Permit Evaluator and Commenting Agency Questionnaires (Chapter 3, Part 7)

Questionnaires were developed to poll Corps permit evaluators, PADEP permit evaluators and technical resource agency staff. The purpose of these questionnaires was to obtain evaluator and review agency staff feedback regarding the PASPGP processes (i.e. regarding efficiency, quality of project reviews, coordination, etc.) and to identify areas where the process can be improved or refined. A summary of Corps evaluator and resource agency staff responses is provided.

1. Permit Evaluator Questionnaire Findings:

While Corps permit evaluators generally indicated that their workload, including monitoring of the PASPGP program, has increased since inception of the PASPGP, most respondents indicated that less time is spent on projects with impacts less than one acre, allowing additional time to be spent on projects with larger environmental impacts. For most projects, processing time under PASPGP appears to be the same or less as compared to the process prior to implementation of the PASPGP.

2. Commenting Agency Questionnaire Findings:

Interagency coordination frequently occurs, and it was indicated that additional coordination through pre-application meetings would benefit agency representatives, as well as applicants. The commenting agencies also indicated that regional variations exist among both Corps Districts and PADEP Offices.

Consultants Questionnaire (Chapter 3, Part 8)

In order to obtain user feedback concerning the PASPGP, a questionnaire was developed (see Appendix) and sent to 110 engineering consulting firms. The responses were tabulated and are presented in Chapter 11. Overall, user responses indicated that the PASPGP has provided a more timely, better understood, and more streamlined process, as compared to the process in place prior to implementation of PASPGP.

The Endangered Species Act (Chapter 4)

An assessment of the PASPGP process in effectively meeting the requirements of Section 7 of the Endangered Species Act is provided. This includes both the USFWS perspective and a summary of recommendations and actions already being implemented to insure compliance with the requirements of Section 7 of the Endangered Species Act, including Pennsylvania Natural Diversity Inventory (PNDI), screening for all GPs and secondary screening processes for the bog turtle (*Clemmys muhlenbergii*) and the northern riffleshell mussel (*Epioblasma torulosa rangiana*).

Compensatory Wetland Replacement and the Pennsylvania Wetland Replacement Project (Fund) (Chapter 5)

A brief discussion of the PADEP FUND and the manner in which it can be effectively incorporated into the PASPGP, is provided. The Corps and PADEP will finalize an SOP for the Fund which meets the needs and requirements of both Federal and State programs. Upon finalization, the SOP will be incorporated into the PASPGP process. Assessment of mitigation and mitigation success is an ongoing task on the part of the Corps and PADEP and is not included in this report.

Conclusions

The PADEP Chapter 105 program, in conjunction with the Federal Program, including the PASPGP, provides a greater level of protection for aquatic resources and better customer service than would the Federal program alone with the Individual and Nationwide Permit program. Some process differences were identified with the potential for more than minimal impacts, which in a few instances resulted in more than minimal impacts under the PASPGP. Recommendations for improving the PASPGP process and implementation are provided in the report, many of which are already underway. Recommendations include modifications to application forms, improved file documentation, joint agency training, and new PASPGP procedures. The monitoring effort identified many positive findings concerning the PASPGP process, as a result of the Corps/PADEP/CCD partnership. Also, the Corps and PADEP are continuing to work in concert with the Federal and State resource agencies to improve the PASPGP through amendment and refinements. Both the Corps and PADEP expect

that the implementation of the recommendations will result in an improved PASPGP that will benefit both the resource and the regulated public. It is expected that with continued progress, the Corps may be able to recommend reissuance of the PASPGP for a five-year period.